

Rev. Rul. 70-614 (IRS RRU), 1970-2 C.B. 150, 1970 WL 20524

Internal Revenue Service (I.R.S.)  
Revenue Ruling

Published: 1970

[26 CFR 1.871-8](#): Definition of engaging in trade or business within the United States.

**\*1** A Japanese national temporarily in the United States with his wife and children on an F or J-1 visa as the result of a fellowship grant is entitled to additional deductions for exemptions as provided in Article XVI(1) of the United States-Japan Income Tax Treaty.

Advice has been requested whether a Japanese national, temporarily in the United States on an F or J-1 visa, as the result of a fellowship grant, may claim the benefits of Article XVI(1) of the United States-Japan Income Tax Treaty.

Article XVI(1) of the treaty provides, in part, for the purposes of the tax of the United States in the case of a resident of Japan who is a nonresident of the United States (other than an officer or employee of the Government of Japan), in addition to the exemption provided by the predecessor of [section 873 of the Internal Revenue Code of 1954](#), a credit against net income, within the limits provided therein, for the spouse of the taxpayer and for each child of the taxpayer who are present and residing with him in the United States at any time during the taxable year. Article XVI(2) provides, in part, that a United States citizen who is a resident of Japan shall be allowed the same exemptions for dependents as a national who is a resident of Japan.

The Report of the Department of State dated May 4, 1954, on the Convention between United States and Japan indicates that Article XVI of the treaty is intended to cover residents of Japan who are living in the United States and performing personal services.

[Section 873\(a\)](#) of the Code provides, in part, that a nonresident alien is entitled to all deductions with respect to income which is effectively connected with the conduct of trade or business in the United States except certain exceptions under subsection (b). [Section 873\(b\)](#) of the Code, as pertinent here, limits a nonresident alien to one allowance for personal exemption.

[Section 871\(c\)](#) of the Code, relating to participants in certain exchange or training programs, provides that a nonresident alien individual who (without regard to the subsection) is not engaged in trade or business within the United States and who is temporarily present as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended ([8 U.S.C. 1101\(a\)\(15\)\(F\) or \(J\)](#)), shall be treated as a nonresident alien individual engaged in trade or business within the United States, and any income (described in [section 1441\(b\)\(1\) or \(2\)](#) of the Code) which is received by such individual shall, to the extent derived from sources within the United States, be treated as effectively connected with the conduct of a trade or business within the United States.

[Section 1.871-8\(a\) of the Income Tax Regulations](#) defines, in part, the term 'engaged in trade or business within the United States' to include the performance of personal services within the United States subject to certain exceptions not applicable here.

**\*2** Thus, a nonresident alien individual who is in the United States under a fellowship grant and who by virtue of [section 871\(c\)](#) of the Code is treated as being engaged in a trade or business within the United States is also treated as performing personal services within the United States.

Accordingly, it is held that a Japanese national who is temporarily in the United States on an F or J-1 visa as result of a fellowship grant is entitled to the benefits of Article XVI(1) of the United States-Japan Income Tax Treaty. Thus, the Japanese national, in addition to being allowed deductions connected with income which is effectively connected with the conduct of a trade or business within the United States and a deduction for one allowance for personal exemption under [section 873](#) of the Code, shall be entitled to additional deductions for exemptions as provided in Article XVI(1) of the treaty.

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